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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Proposal of the Joint Board to Cap High-Cost Loop Support for CETCs

Dear Ms. Dortch:

On June 6, 2007, ETS Telephone Company, Inc. ("ETS") submitted comments supporting Chairman Martin's position that the Joint Board's proposed cap on federal high-cost universal service support should not be imposed on a CETC (such as ETS) that relies on its own cost study rather than on the "identical support" rule.[1] No other party opposed this position in comments or reply comments, while two other parties explicitly supported it.[2] Moreover, even the record generated by parties that did not address the Chairman's position also confirm the basic facts that support it: specifically, that an ETC that receives support based upon its own costs (1) is already capped by existing rules[3] and (2) is not part of the supposed problem that the Joint Board is trying to address, and need

[1] Comments of ETS Telephone (June 6, 2007).
[2] *See* Rural Independent Competitive Alliance (RICA) Comments at 3-5; Unicom Comments of at 2.
[3] Some ILECs contend that it would not be unfair to apply the new cap to CETCs but not to ILECs because ILECs are already subject to other caps. *See, e g.*, OPASTCO Comments at 3-4, Embarq Comments at 6. *See also* Fred Williamson & Associates Reply Comments at 3-4. Whatever the merits of this argument, ETS is subject to the same caps that apply to rural ILECs because it applies for and receives support using the same rules as rural ILECs. Therefore, ETS' support is already capped without subjecting ETS to a new, second cap under the Joint Board's proposal.

not be subjected to the Joint Board's proposed interim solution.[4] In fact, the ETS model *is* the solution favored for the long-term by many parties. As NTCA explained:

> ETS ... states that [the cap] should not apply to any CETC that demonstrates that its costs meet the support threshold in the same manner as ILECs. This is consistent with NTCA's request that the FCC eliminate the identical support rule and require CETCs to base their universal service support on their own costs.[5]

Because imposition of a cap on cost-based carriers is unnecessary to rein in the growth of the high-cost fund, and undermine rather than support the long-term objectives for the fund,[6] the Commission should adopt ETS' unopposed proposal to exempt such carriers from any new CETC cap.

However, two parties in their reply comments casually suggested that the Commission should overlook this defect in the Joint Board's proposal, and should instead rush to approve the cap without any remedial modification, notwithstanding the detrimental and illogical impact it would have on cost-based rural ETCs and on the consumers who depend on them. First, Fred Williamson & Associates states:

> ETS Telephone Company, Unicom and RICA propose that ... CETCs that use their own cost studies are similar to ILECs on the facts relevant to the cap and should not be subject to the cap. FWA sympathizes with these comments, but believes for the interim period proposed by the Joint Board, uniformity across the states in the operation of the CETC federal support cap is essential. ... If the interim cap time frame is extended

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[4] *See* NECA Comments at 2 ("growth in high cost funding is primarily attributable to the effects of the current 'identical support' rule"); GCI Comments at iii ("capping CETCs that offer [services in the same product market as ILEC basic connectivity] would do little to rein in high-cost universal service spending because those carriers account for only a small and shrinking part of the high cost fund distributions, even without any cap in place."); ITTA Reply Comments at 2 ("wireless CETC funding in 2006 reached in excess of $637 million, while funding to wireline CETCs was $12.4 million."). *See also* RICA Comments at 1-2 ("RICA member CETCs and other wireline CLECs receive only a tiny and diminishing fraction of the high cost support to competitive carriers, almost all of which goes to mobile wireless carriers. The 'explosive' growth in the high cost support to CETCs is thus not the result of either growth or volume of support to wireline facilities-based CLECs.").

[5] National Telecommunications Cooperative Association Reply Comments at 5.

[6] *See* ETS Comments at 3-5.

> substantively, then CETCs that are willing to file their own costs to justify their federal support levels should be removed from the cap.[7]

Given that FWA agrees that "CETCs that are willing to file their own costs to justify their federal support levels should be removed from the cap" in the future, it makes no sense not to implement that result now at least for carriers such as ETS that are *already* utilizing their own costs. Contrary to FWA's comments, there is no virtue in "uniformity across the states in the operation of the CETC federal support cap" where such uniformity means imposing a generic straightjacket on carriers such as ETS that FWA's own comments show need not and should not be subjected to the change.

Similarly, NASUCA states:

> RICA and ETS, following on a suggestion in Chairman Martin's Statement, propose that CETCs that demonstrate their costs should receive support despite the cap. Not only is there not agreement on which CETC costs should be considered -- embedded like the rural ILECs, or forward-looking like the non-rural ILECs -- but it is likely that by the time that agreement was reached over which costs should be considered, the cap would have expired.[8]

But NASUCA's theory is upside down for ETS, which already receives support based upon its own costs. No changes or decisions are necessary for ETS to continue to apply for and receive USF support based upon its costs. But if the Commission adopted the Joint Board's proposal as is, the Commission would then have to consider whether the public interest would be disserved by forcing ETS to obtain identical support to an ILEC when there is no ILEC serving some areas in which it is providing service. The proposed cap is intended by its supporters to be a short-term means of holding in place the *status*

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[7] Fred Williamson & Associates Reply Comments at 29-30.
[8] NASUCA Reply Comments at 19.

quo as of 2006 until longer-term reform has been achieved;[9] by contrast, the Commission should have no interest in subjecting cost-based CETCs to a highly disruptive switch away from the *status quo* to temporary reliance on the identical support rule when the Commission immediately thereafter will be considering the Joint Board's proposal to abolish that very rule.[10]

NASUCA's concern is also overstated even for CETCs that do not presently submit their own cost studies. The existing rules provide all of the necessary guidance to a wireline CETC to determine how to seek USF support based on its costs. As Unicom explained:

> While Unicom supports the Joint Board recommendation of placing a cap on CETC support, Unicom also urges the Commission to begin creating a process whereby CETCs can file cost data that would justify the support for each individual carrier. Verifiable cost based support for a CETC should then not fall under the cap proposed by the joint board. This process would be relatively straightforward for wireline CETCs, as they generally have the same equipment as the wireline ILEC and should be able to follow the same accounting and separations rules that result in calculated support.[11]

ETS is proof of this. For nearly a decade, ETS has submitted its own cost studies and received support in the same manner as a rural ILEC, without undue difficulty. The Commission should be attempting to make it easier, not harder, for other CETCs to follow ETS' example, given the Joint Board's longer-term interest in eliminating the identical support rule. If the identical support rule is a significant cause of the existing problem, it would be shortsighted both to force ETS to adopt it and to forgo an opportunity to incent other CETCs to move to a more sustainable cost-based approach.

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[9] *See* Verizon Reply Comments at 3, fn. 5 (quoting Corr Wireless Comments at 1-2, "A cap is a quick and efficient way to stop growth in USF revenue requirements while maintaining something like the status quo.").
[10] *Recommended Decision* at ¶ 12.
[11] Unicom Comments at 2.

For all of the reasons set forth above and in its comments, ETS supports Chairman Martin's position that any cap on CETC support should not apply to a CETC that demonstrate that its costs meet the support threshold in the same manner as ILECs.

Respectfully submitted,

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